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09/836,686	04/17/2001	Mark T. Gross	INTL-0556-US (P11214)	7180

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07/16/2003

Timothy N. Trop
TROP, PRUNER & HU, P.C.
8554 KATY FWY, STE 100
HOUSTON, TX 77024-1805

EXAMINER

FLETCHER, MARLON T

ART UNIT PAPER NUMBER

2837

DATE MAILED: 07/16/2003

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 10

Application Number: 09/836,686

Filing Date: April 17, 2001

Appellant(s): GROSS, MARK T.

Mark J. Rozman; Trop, Pruner, & Hu, P.C.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/25/2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 10-16, 23-24, and 25 stand as three separate groups and appellant's brief includes a statement that this grouping of claims stand or fall together and provides reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

6,282,653	Bertis et al.	8-2001
6,192,340	Abecassis	2-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 10-16, 23-24, and 25 are rejected under 35 U.S.C. 103 (a) over Abecassis in view of Bertis et al. This rejection is set forth in prior Office Action, Paper No. 5. and as reproduced below:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abecassis (6,192,340).

As recited in claims 1 and 26, Abecassis discloses a portable device (100, 200), comprising: an interface (106) to receive at least one file from another device as discussed in column 7, lines 23-42; and a controller (131) to be communicatively coupled to the interface, the controller to allow transfer of the file as discussed in column 7, lines 43-54.

As recited in claim 2 and 27, Abecassis discloses the portable device wherein the interface receives at least on file containing digital music as discussed in column 5, lines 40-48.

With respect to claims 6, 7, 11, 12, 16, 25, and 29, Abecassis discloses security system (453) for providing file security.

As recited in claim 8, Abecassis discloses the portable, wherein the interface receives the file from another portable device as discussed in column 10, lines 62-64.

As recited in claim 10, 17, and 23, Abecassis discloses a method, comprising: selecting at least one music file from a first portable device to transfer to a second portable device as discussed in column 10, lines 50-64; transferring the music file to the second portable device as discussed in column 5, lines 40-48; and wherein the portable device may transfer the music file to one or more devices.

Abecasis does not disclose the use of a transfer count nor encryption of a file.

However, with respect to claims 1-5, 10, 13-15, 17-24, 28, and 30, Bertis et al. disclose a transfer count which can be embedded in a file to control and update a system based on the number of transferred files as discussed in the abstract and column 8, line 56 through column 9, line 17.

With respect to claims 6, 7, 11, 12, 16, 25, and 29, Bertis et al. disclose encrypt or secure files as discussed in column 7, lines 47-49.

With respect to claim 9, Bertis et al. disclose transfer of the files which comprises the transmission of a copy of the file as discussed in the abstract and column 8, line 56 through column 9, line 14.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Bertis et al. with the apparatus of Abecassis, because the teachings provide enhancement by allowing the apparatus to count the transfer files and provide control over the transferring of files to other devices.

(11) Response to Argument

Appellant's arguments filed 11/25/2002 have been fully considered but they are not persuasive.

With respect to claims 10-16, the appellant admits that Abecassis and Bertis et al. generally teach the transfer of files between computers. Abecassis does not disclose the use of a transfer count. The appellant adds that Bertis et al. do not teach "transmitting a preselected transfer count" to a second portable device. The appellant's emphasis appear to be that the transfer count are not provided between portable devices. However, Abecassis is relied upon by the examiner to show the transfer of files amongst portable devices as discussed in the office action, figures 1-3 of Abecassis provide portable devices which transfer files. Bertis et al. is relied upon to show the ability to transfer files amongst computers, wherein the a transfer count is provided therewith to indicate the number of times the file has been transfer, wherein there is a limited number of times the files can be transferred. In combination the references provide the transfer of files amongst computer devices and the ability to provide a transfer count that indicates the number of times the file has been transferred and how many times the file can be transferred. It would have been obvious to one of

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ordinary skill in the art to use the transfer count as taught by Bertis et al. with the apparatus of Abecassis, because it provides not only the ability to keep count of files being transferred and limiting the number of times a file can be transferred, it also provides the enhancement to use the teachings with portable devices, wherein the only differences in the devices is portability. Both devices provide the transfer of files from one device to another.

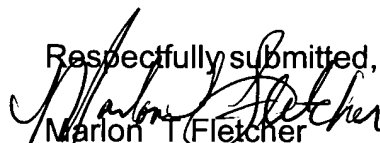
With respect to claims 23-24, the issues involve matters discussed above, and further discuss the issue of indicating the number times the file may be transferred or can be transferred, to the player. As discussed in the office action, Bertis et al. clearly covers this feature as discussed in column 8, line 56 through column 9, line 17, wherein this feature can further be seen in column 5, lines 23-30 and lines 53-60; column 6, lines 36-42 and lines 59-67; and as disclosed in the abstract. Again, Abecassis is relied on, to show the transfer of files amongst portable computers or devices. In combination the claim limitations are met, wherein Bertis et al. provide the transferring of files and the transfer count and indication of how many times the file can be transferred.

With respect to claim 25, the appellant's argues that neither Abecassis nor Bertis et al. provide transmitting the file to a Secure Digital Player. However, the examiner disagrees. The examiner clearly points out the elements of security in Bertis et al., wherein Bertis et al. disclose encryption of files as a method of securing files transferred between computers. The examiner further pointed out the security systems as taught by Abecassis, wherein the security system is a makeup of the player device as discussed in column 12, lines 10-18.

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In conclusion, it is the examiner's belief that the claims for appeal are met by the prior art and that the examiner has clearly pointed out in the office action, the limitations recited in the claims.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Marlon T. Fletcher
Primary Examiner
Art Unit 2837

MTF
July 14, 2003

Conferees

Marlon T. Fletcher

Robert Nappi *RN*

Olik Chaudhuri *OC*

Timothy N. Trop
TROP, PRUNER & HU, P.C.
8554 KATY FWY, STE 100
HOUSTON, TX 77024-1805